IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1788 OF 2007

Ramchandra Anandrao Baile..... ....Petitioner
V/s
The State of Maharashtra ....Respondent.

Mr.R.S.Kate, Adv. For the petitioner.

Mrs.M.H.Mhatre, APP For the respondent.

CORAM: A.P.DESHPANDE, J.
30/11/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The wife of the petitioner set herself on fire on 2.5.06 and allegedly committed suicide. The petitioner is being prosecuted for commission of an offence under section 498A and section 306 of Indian Penal Code. The petitioner has engaged an advocate to defend him. P.W.1 was examined on 20.2.07 and the matter was adjourned to 21.2.07 on which date the counsel for the petitioner moved an application for adjournment. The Sessions Judge rejected the said application and as the accused declined to cross examine the witness in person an order came to be passed to proceed without cross. In a similar situation evidence of P.W.2 was recorded on 17.5.07 and yet again advocate for the petitioner-accused moved an application for adjournment. Same was rejected

and as the accused-petitioner declined to cross examine the witness in person no cross order came to be passed on 7.5.07. It is not in dispute that the witnesses examined thereafter have been cross examined by the accused-petitioner. As there has been no cross of P.Ws. 1 and 2 the petitioner moved an application for recall of the said witnesses so as to enable the petitioner to cross examine them. The rejection of the application for recall of witnesses for cross examination has given rise to the filing of the present writ petition. Learned counsel for the petitioner submits that for no fault of the petitioner the petitioner has been deprived of right to cross examine the witnesses viz. P.W. Nos. 1 and 2 examined by the prosecution. It is submitted that if the witnesses are not recalled for cross examination the petitioner will be put to suffer utomost hardship and inconvenience on account of failure to cross examine the witnesses. In the submission of the learned counsel for the petitioner there would be miscarriage of justice on account of denial of an opportunity to the petitioner to cross examine P.W. Nos. 1 and 2. On instructions from the petitioner-accused, who is present in the Court, learned counsel has submitted that hereafter the petitioner will not seek any adjournment and if given an opportunity will cross examine P.Ws. 1 and 2 without causing any further delay. Learned counsel on instructions from the petitioner has submitted that now the trial is fixed on 5.12.07 and if P.Ws.1 and 2 are directed to remain present on 5.12.07 the petitioner will go ahead with cross examination of the said witnesses. Learned additional public prosecutor opposed the prayer made in the writ

petition and has supported the order passed by the Additional Sessions Judge, Satara rejecting the application moved by the petitioner at Ex.21 for recalling of witnesses for cross examination. I have no iota of doubt in my mind that for just decision of the case one more opportunity need to be granted to the petitioner to cross examine P.Ws.1 and 2 as otherwise it would result in failure of justice. Hence with a view to reach just decision of the case I quash and set aside the impugned order passed by the Additional Sessions Judge, Satara dated 18.6.07 which goes to reject the application moved by the petitioner at Ex.21 praying for recall of P.W.Nos.1 and 2. I direct the Additional Sessions Judge, Satara to recall P.W. Nos.1 and 2 for their cross examination by the petitioner-accused if possible on 5.12.07 or on any other date which may be convenient to the Court. The statement of the learned counsel for the petitioner-accused that no further adjournment will be sought is accepted. After affording an opportunity of cross examination to the petitioner the Sessions Judge shall proceed to decide the case on merits in accordance with law. Rule made absolute in above terms.

30.11.07